

Office of the Governor
Patient's Compensation Fund Oversight Board
(LAC 37:III Emergency Rule 2)

Upon finding that imminent peril to the public health, safety or welfare required adoption of an emergency rule, the Patient's Compensation Fund Oversight Board (Oversight Board), under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq. (MMA), as directed by the Governor of Louisiana in Section 10 of Executive Order No. KBB 2005-40, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., adopted this Emergency Rule 2 at its meeting held on September 27, 2005.

On August 26, 2005, Governor Kathleen Babineaux Blanco issued Proclamation No. 48 KBB 2005 and declared the existence of a State of Emergency within the State of Louisiana caused by Hurricane Katrina. This State of Emergency extended from Friday, August 26, 2005 through Sunday, September 25, 2005.

On September 2, 2005, Governor Kathleen Babineaux Blanco issued Executive Order No. KBB 2005-26 and declared a State of Public Health Emergency within the State of Louisiana. This State of Public Health Emergency extends from September 2, 2005 until the Order is amended, modified, terminated or rescinded. On September 12, 2005, Governor Kathleen Babineaux Blanco issued Executive Order No. KBB 2005-33 and again declared a State of Public Health Emergency within the State of Louisiana. This State of Public Health Emergency extended retroactively from September 2, 2005 through September 25, 2005.

On September 19, 2005, the Oversight Board adopted Emergency Rule 1 (Title 37, Part III), which implemented a sixty (60) day "grace" period for the payment of a partial Patient's Compensation Fund (PCF or Fund) renewal surcharge by certain PCF qualified health care providers (QHCPs) and the remaining balance of the renewal surcharge to be paid at a later date.

On that same day following the issuance of the Oversight Board's Emergency Rule 1, Governor Kathleen Babineaux Blanco issued Executive Order No. KBB 2005-40 and transferred limited authority to the Commissioner of Insurance, authorizing him to suspend the provisions of any regulatory statute or orders, rules or regulations of the Department of Insurance for purposes of enacting and enforcing, *inter alia*, Emergency Rule 15 of the Department of Insurance. In this same Executive Order, Governor Kathleen Babineaux Blanco directed the Oversight Board to adopt emergency rules regarding a temporary suspension of the payment of PCF surcharges by QHCPs who reside, practice or operate in disaster affected areas (Affected QHCPs) for such PCF coverage to continue.

On September 20, 2005, Louisiana Insurance Commissioner J. Robert Wooley acknowledged the foregoing and issued Emergency Rule 15, thereby suspending certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium

payments, claim filings and related provisions regarding any and all insurance matters affecting certain insureds in Louisiana caused by Hurricane Katrina. On that same day, Governor Kathleen Babineaux Blanco issued Proclamation No. 53 KBB 2005 and declared the existence of a State of Emergency within the State of Louisiana as Hurricane Rita posed an imminent threat to Louisiana. This State of Emergency extends from Tuesday, September 20, 2005 through Thursday, October 20, 2005, unless terminated sooner.

On September 22, 2005, Governor Kathleen Babineaux Blanco issued Proclamation No. 54 KBB 2005, which renewed Proclamation No. 48 KBB 2005 (which said order had declared a State of Emergency within the State of Louisiana). Proclamation No. 54 KBB 2005 effectively extends the State of Emergency from September 25, 2005 through October 25, 2005, unless terminated sooner.

On September 23, 2005, Governor Kathleen Babineaux Blanco issued Executive Order No. KBB 2005-47, which extended Executive Order No. KBB 2005-33 (which said order had declared a State of Public Health Emergency within the State of Louisiana). Executive Order No. KBB 2005-47 effectively extends the State of Public Health Emergency until October 25, 2005.

The MMA and the Oversight Board's rules (Title 37, Part III) require insurers, agents and approved self-insured trust funds (trust fund) to collect PCF surcharges along with insurance premiums and to remit the surcharges to the PCF. In an effort to harmonize the collection of PCF surcharges with the collection of premiums from Affected QHCPs by insurers, agents and trust funds, and to provide self-insured QHCPs with the same relief, the Oversight Board rescinded and terminated Emergency Rule 1 and adopted this Emergency Rule 2.

Thousands of Louisiana citizens, including many QHCPs, have suffered damages due to Hurricane Katrina. The health care practices of many QHCPs and the homes of many patients were severely damaged precluding the operation of practices, habitation and the delivery of mail. It is believed that this disruption has affected, and will affect for some time, the ability of these QHCPs to timely pay their annual PCF renewal surcharges and, as such, may seriously affect the provision of health care services by QHCPs to patients in Louisiana.

In the ordinary course of business and pursuant to LAC 37:III §517, a QHCP who is insured by an insurance company or by a trust fund is allowed a "grace" period of thirty (30) days in which to pay the annual PCF renewal surcharge to the insurer, agent or trust fund to extend PCF coverage for another year. Pursuant to this same provision, a self-insured QHCP is required to pay the annual PCF renewal surcharge to the PCF prior to the expiration of the prior year's PCF coverage. Hurricane Katrina and its aftermath have produced a disruption in the ability of many QHCPs in these affected areas to timely pay the annual PCF renewal surcharge to maintain their enrollment in the Fund. This could result in a QHCP being without PCF coverage or having a gap in PCF coverage. This Emergency Rule 2 was adopted to provide emergency relief to the Affected QHCPs.

Accordingly, **IT IS HEREBY ORDERED:**

2.1 Emergency Rule 2 shall only apply to QHCPs:

- (i) who resided in or who maintained operation(s) and/or practice(s) located in one or more of the following fourteen (14) parishes as of August 26, 2005 or in one or more of any parish(es) identified by Louisiana Insurance Commissioner J. Robert Wooley in an amendment to Emergency Rule 15 or any subsequent emergency rule regarding insurance matters affecting certain insureds in Louisiana caused by Hurricane Rita:

Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington; and

- (ii) whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 26, 2005 but prior to the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath.

For purposes of this Emergency Rule, QHCPs who meet all of the above criteria shall be referred to herein as “Affected QHCPs”. The provisions of this Emergency Rule 2 shall not apply to any health care provider not previously enrolled in the PCF prior to August 26, 2005.

2.2 The Oversight Board’s Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF’s Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for Affected QHCPs during the effective periods set forth in this Emergency Rule. Except as provided for in Section 2.5, the cancellation of PCF qualification for Affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath.

PCF surcharges for all Affected QHCPs (including self-insured QHCPs and those who are insured by an insurance company or by a trust fund), whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 26, 2005 but prior to the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath (suspension period), shall be due and owing on the date the current State of

Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath, is lifted. However, all Affected QHCPs shall be allowed a “grace” period until **January 1, 2006** to pay the appropriate PCF surcharge (to extend PCF coverage for another year or to purchase a PCF extended reporting endorsement) to the insurer, agent, trust fund or directly to the PCF (in the case of self-insured Affected QHCPs). Affected QHCPs shall also furnish the required proof of financial responsibility concurrently with the payment of the appropriate surcharge.

- 2.3 In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an Affected QHCP, then the renewal surcharge shall be remitted to the PCF consistent with the MMA and the Oversight Board’s applicable rules.
- 2.4 A cancellation of PCF qualification shall not occur prior to the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath, unless upon the documented written request or written concurrence of the Affected QHCP.
- 2.5 Unless otherwise cancelled pursuant to the provisions of Section 2.5 herein, nothing in this Emergency Rule 2 shall be construed to exempt or excuse an Affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period.
- 2.6 Emergency Rule 2 shall not relieve an Affected QHCP from compliance with the MMA and the applicable Oversight Board’s rules upon receiving notice of the filing of a medical review panel request (claim) against the Affected QHCP.
- 2.7 The provisions of Emergency Rule 2 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the Affected QHCPs and the citizens of Louisiana.
- 2.8 Emergency Rule 1, issued on September 19, 2005, is hereby rescinded and terminated.

- 2.9 Emergency Rule 2 became effective on the date of its adoption by the Oversight Board, September 28, 2005, and shall continue in full force and effect for the duration of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath.

Baton Rouge, Louisiana, this 28th day of September, 2005.

A handwritten signature in black ink on a light-colored, textured background. The signature is written in a cursive style and reads "Lorraine LeBlanc".

Lorraine LeBlanc
Executive Director
Patient's Compensation Fund Oversight Board